

SENATE BILL 694  
By Henry

AN ACT to amend Tennessee Code Annotated, Title 63; Title 68 and Title 71, relative to nursing home facilities and services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) This act shall be referred to as the "Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act".

(b) The general assembly finds it necessary to enact this act to provide more effective legislative protection for nursing home residents and consumers of long-term care, for the following reasons:

(1) Nursing home residents and consumers of long-term care are often vulnerable because they are medically frail, economically disadvantaged or socially isolated.

(2) State government is the largest purchaser, through its medical assistance program, of nursing home care in Tennessee, and public subsidies pay for part or all of the care of most nursing home residents. State medical assistance policies also require most nursing home residents to pay all but a token amount of their incomes to the facilities in which they reside, providing an important additional source of revenue for

those facilities. State payments to nursing homes therefore create incentives that profoundly influence the quality of care received by nursing home residents.

(3) Quality of care in nursing homes has a substantial impact on public health.

(4) State government's fiduciary responsibilities as purchaser of nursing home care, the vulnerability of many nursing home residents and the protection of public health make it necessary to improve and maintain the effectiveness of public regulation and oversight of nursing homes, and to enhance the ability of residents to enforce nursing home quality standards and protect their rights.

This act is remedial in nature and is to be construed liberally to achieve its purposes.

SECTION 2. Tennessee Code Annotated, Section 68-1-104, is amended by adding the following language, which shall be designated as new subsection (8):

(8) The commissioner shall promptly report to the commissioner of finance and administration and to the comptroller of the treasury any finding of a violation of nursing home standards or residents rights' that would affect the amount of payment for which a nursing home would qualify under § 71-5-130, under the terms of payment criteria applicable at the time.

SECTION 3. Tennessee Code Annotated, Section 68-1-104, is further amended by adding the following language, designated as a new subsection (9):

(9) The commissioner shall submit a report by not later than February 1 of each year to the governor and to the speakers of the general assembly regarding the department's nursing home inspection and enforcement activities during the previous year. The report shall analyze trends in compliance with nursing home standards and residents' rights by nursing homes in the state. In the report, the commissioner shall describe the manner and extent to which the state adjusted payments under section 71-5-130 to reflect the level of compliance by nursing homes receiving such payments. In preparing the report, the commissioner shall utilize quantitative data compiled by nursing

homes pursuant to federal or state regulations. The report shall contain the commissioner's recommendations for changes in state law or policy that would improve the quality of care and quality of life in nursing homes. The commissioner shall ensure that the report is promptly made available to the public by dissemination via the Internet, as well as in printed format.

SECTION 4. Tennessee Code Annotated, Section 68-1-104, is further amended by adding the following language, designated as subsection (10):

(10) In consultation with the commission on aging and disabilities, the commissioner shall submit to the speakers of the respective houses of the general assembly by January 1, 2004, a plan for contracting by the department of health with one (1) or more educational institutions established under title 49, chapters 8 and 9, to establish and maintain academic programs for improving the quality of care and quality of life in Tennessee nursing homes. The plan shall provide for such educational programs to:

- (A) Conduct research and provide technical assistance to nursing homes;
- (B) Provide training to nursing home personnel;
- (C) Assist nursing home residents and their family members form councils to advise facility management on the nursing home's operations; and
- (D) Provide technical support to the long-term care ombudsman program administered by the commission on aging.

The commissioner shall ensure that the programs proposed in such plan are administered in a manner that separates their technical assistance function from the department's regulatory functions, in order to keep from compromising the regulatory process. Acceptance of technical assistance or other services from a program established pursuant to such plan shall not relieve a nursing home of its responsibility for compliance with all applicable laws and regulations. Any programs established pursuant

to this subsection shall be funded from revenues collected under section 68-11-216(f), and by reasonable user fees for the services provided.

SECTION 5. Tennessee Code Annotated, Section 68-11-207, is amended by deleting subsection (d) in its entirety and substituting in its place the following:

(d) Subject to the limitations prescribed by this subsection, in any case in which the suspension or revocation of a license is justified, the board may, in its discretion, place the facility on probation.

(1) No facility that is already on probation, or that has been on probation at any time within the past twenty-four (24) months may be placed or continue on probation, unless the facility agrees to the appointment by the commissioner of temporary management pursuant to section 68-11-831.

(2) No facility that is on probation shall be allowed to admit new patients until temporary management has been appointed and is operating the facility, and the department determines that the health and safety of current and new patients can be reasonably assured.

SECTION 6. Tennessee Code Annotated, Section 68-11-214, is amended by adding the following subsection to be designated as follows:

(c) During the fiscal year beginning July 1, 2004, the department shall increase, by a net of nine (9) full time equivalent inspector positions, the inspection resources, as measured by full time equivalent positions filled and deployed, that are committed to the inspection of nursing homes and the enforcement of nursing home standards. The department shall maintain those resources at that level or higher in subsequent fiscal years.

SECTION 7. Tennessee Code Annotated, Section 68-11-216, is amended by adding the following language as a new subsection to be designated as follows:

(f) In addition to the fees set forth above, nursing homes shall pay a surcharge set by the commissioner in an amount sufficient, when all such surcharges are collected and combined with any other sources of funding dedicated to the same purposes, to:

(1) Fund the additional inspection resources required by § 68-11-214(c);

(2) Fund the nursing home resident protection trust fund established by § 68-11-827;

(3) Fund the additional ombudsman resources required by § 71-2-109;

and

(4) Fund any educational programs established pursuant to § 68-1-104(10).

SECTION 8. Tennessee Code Annotated, Section 68-11-801, is amended by adding the following new subsection, to be designated as follows:

(e) It is the public policy of this state that the nursing home requirements and resident protections established by state law are to be faithfully enforced as provided in this part. The potential availability of sanctions authorized by federal law, regardless of whether such sanctions are imposed by any official or agency of the federal government, does not diminish or otherwise affect the authority and responsibility of the commissioner to impose the penalties established by this part for the purpose of enforcing state nursing home standards against deficient facilities. In any review of a civil monetary penalty imposed under this part, it shall not be a grounds for reducing or eliminating such penalty that the same deficiency or violation for which the penalty was imposed was, or could have been, the subject of a separate penalty or sanction by a federal official or agency.

SECTION 9. Tennessee Code Annotated, Section 68-11-811, is amended by inserting at the beginning of subsection (a) the phrase, "Subject to the provisions of subsection (e),"; by deleting from subsection (a) the language "one thousand five hundred dollars (\$1,500)" and

substituting instead “two thousand five hundred dollars (\$2,500)”; by deleting from subsection (a) the language “five thousand dollars (\$5,000)” and substituting instead “seven thousand five hundred dollars (\$7,500)”; by inserting at the beginning of subsection (b) the phrase, “Subject to the provisions of subsection (e),”; by deleting from subsection (b) the language “five hundred dollars (\$500)” and substituting instead “seven hundred and fifty dollars (\$750)”; by deleting from subsection (b) the language “one thousand dollars (\$1,000)” and substituting instead “one thousand five hundred dollars (\$1,500)”; by inserting at the beginning of subsection (c) the phrase, “Subject to the provisions of subsection (e),”; and by deleting from subsection (c) the language “two hundred fifty dollars (\$250)” and substituting instead “four hundred dollars (\$400)”.

SECTION 10. Tennessee Code Annotated, Section 68-11-811, is further amended by adding the following language as a new subsection to be designated as subsection (e):

(e) The commissioner shall annually adjust the amounts specified in subsections (a) through (c) by an amount equal to the previous year’s change in the consumer price index, as calculated by the bureau of labor statistics of the United States department of labor.

SECTION 11. Tennessee Code Annotated, Section 68-11-827, is amended by inserting at the end of subdivision (a)(1), immediately before the period, the language, “and collected for these purposes under the provisions of section 68-11-216(f)”.

SECTION 12. Tennessee Code Annotated, Section 68-11-827, is further amended by adding the following language to be designated as a new subdivision (5) of subsection (a):

(5) In addition to any other lawful use of the nursing home resident protection trust fund, the fund may also be used for establishing a revolving fund to provide legal assistance through the long-term care ombudsman program, as authorized by this act.

SECTION 13. Tennessee Code Annotated, Section 68-11-828, is amended by designating the existing language as subsection (a) and by adding the following language, to be designated as a new subsection (b):

(b) Any nursing home that becomes insolvent, or that becomes the subject of bankruptcy or receivership proceedings, shall immediately inform the commissioner regarding its financial condition and the status of the legal proceedings. Upon receipt of such information, the commissioner shall apply to any court in which such proceedings are pending for leave to intervene on behalf of the nursing home's residents. As a participant in such proceedings, the commissioner shall advocate for the safety and welfare of the nursing home's residents and shall seek to ensure that the nursing home maintains the capacity to comply with all applicable nursing home quality and residents' rights requirements, or that alternative provision is made for management of the facility to ensure such compliance. In the event that the nursing home is unable to comply with such requirements or is threatened with closure, the commissioner shall seek appropriate safeguards to mitigate any harm to residents resulting from their relocation. In all such proceedings, the commissioner shall be represented by the attorney general and reporter. The commissioner may draw upon the resident protection trust fund for expenses reasonably incurred in carrying out his duties under this section.

SECTION 14. Tennessee Code Annotated, Section 68-11-1607(k), is amended by inserting in the first sentence of subdivision (1), immediately following the words "certificate of need", a semicolon (;) followed by the language:

provided, however, that no entity may increase its total number of licensed nursing home beds as otherwise authorized herein if that entity has been found, or its affiliated or predecessor entity has been found, within the past five (5) years to have violated nursing home quality or resident rights standards, and has been subjected to a Type A civil

monetary penalty, or to an equivalent sanction by the federal government or appropriate regulatory authority of another state, for such violation.

SECTION 15. Tennessee Code Annotated, Section 68-11-1609, is amended by adding the following language as a new subsection to be designated subsection (h):

(h) Notwithstanding any other provision of law to the contrary, the agency may not grant a certificate of need for the expansion or acquisition of nursing home, home health or other long-term care services, to any entity which has been found, or whose affiliated or predecessor entity has been found, within the past five (5) years to have violated nursing home quality or resident rights standards, and has been subjected to a Type A civil monetary penalty, or to an equivalent sanction by the federal government or appropriate regulatory authority of another state, for such violation.

SECTION 16. Tennessee Code Annotated, Section 71-2-109, is further amended by adding the following language, to be designated as a new subsection (d):

(d) During the fiscal year beginning July 1, 2004, the commission shall increase by one hundred percent (100%) the paid ombudsman resources, as measured by full-time equivalent positions filled and deployed, that are committed to the discharge of the duties imposed by 42 U.S.C. § 3058g. The commission shall maintain those resources at that level or higher in subsequent fiscal years and may use the funds authorized by § 68-11-216(f) for that purpose.

SECTION 17. Tennessee Code Annotated, Section 71-5-118, is amended by adding the following language, which shall be designated as a new subsection (m):

(m) The chief executive officer, chief operating officer and chief financial officer of any entity that owns, directly or through a subsidiary, a nursing home receiving payment under this title must each, as a condition of the nursing home's receipt of such payment, sign and submit to the department a quarterly certification under penalty of perjury that the facility meets all applicable conditions of participation, including specifically all quality



and resident rights standards established under title 68 and, where applicable, Titles XVIII and XIX of the Social Security Act. Such certifications are material representations upon which the state relies in making payments under this title. At any time that an individual who has made such a certification learns that such individual's certification was inaccurate when made, or has become inaccurate as a result of changed circumstances, the individual may avoid any legal liability under this chapter that would otherwise arise from the submission of a false certification, if within thirty (30) days of learning of such inaccuracy, the individual provides to the department a written report containing all pertinent information about the nursing home's noncompliance. Such disclosure shall not deprive any injured person or entity of any other legal remedies available under law.

SECTION 18. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following language, which shall be designated as a new section:

71-5-194.

The commissioner of health shall promptly report to the Tennessee bureau of investigation incidents of apparent exploitation, abuse or neglect of nursing home residents, including all instances where Types A civil monetary penalties are imposed, for a determination by the bureau as to whether the incident is related to abuse of the Medicaid program or other criminal violation.

SECTION 19. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is further amended by adding the following language, which shall be designated as a new section:

71-5-195.

The TennCare bureau, commissioner of health and the comptroller of the treasury shall study possible reforms of the methodology used by TennCare to reimburse the costs of prescription drugs for residents of nursing homes. The study shall cover reforms that would enhance protection of residents from dangerous or otherwise

inappropriate medication and improve the quality of resident care while reducing costs to the TennCare program. By January 1, 2004, the TennCare bureau and the comptroller of the treasury shall institute such reforms as their research finds likely to improve care and reduce costs, or they shall submit to the speakers of the respective houses of the general assembly describing their findings and explaining why no reforms are appropriate or feasible.

SECTION 20. If any provision of this act or the application of it to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 21. This act shall take effect on July 1, 2003, the public welfare requiring it.